Supreme Court, U. S.
FILED
OCT 6 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-527

CHARLES W. RAMSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

In a reversal of his role, Charles W. Ramsey now seeks relief from this Court as a petitioner whose substantial rights have been divested by the Court below.[1]

[1] Petitioner, Ramsey was recently the respondent in this case wherein the Court reversed the District of Columbia Circuit on a search and seizure question unrelated to the present issue. *United States v. Ramsey, et al.*, 45 U.S.L.W. 4577 (June 6, 1977). The present issue was not ripe for review at that time because it was not ruled on until after this Court's remand of the cause to the Court of Appeals for further proceedings in conformity with this Court's opinion.

The judgment of the court of appeals (App. A, *infra*, p. 1a) was entered on August 24, 1977, and a petition for rehearing was denied (App. B, *infra*, p. 1b) on September 8, 1977. The time within which to file a petition for a writ of certioriari extends to and including Monday, October 9, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a fifteen year penalty can be enhanced to thirty years when an information was not filed before trial stating the previous conviction to be relied upon in seeking enhancement.

STATUTE INVOLVED

21 U.S.C. 851(a)(1) provides:

(a) (1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, *unless before trial*, or before entry of a plea of guilty, the United States attorney *files an information* with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information

may be amended at any time prior to the pronouncement of sentence. (Emphasis supplied.)

STATEMENT

Petitioner was found guilty of unlawful importation of heroin with intent to distribute it in violation of 21 U.S.C. 841(a) and 952(a) and sentenced to enhanced concurrent terms of imprisonment, the longest of which was 10 to 30 years.

After various motions were denied by the district court, the case went to trial without a jury on the basis of a lengthy stipulated record of fact prepared by government counsel which was filed in various parts over the course of several weeks.

> "On November 22, 1974, trial by jury earlier having been waived, . . . , the Court accepted a document earlier profferred (sic) by the government for examination *and thereupon the trial commenced.*
>
> * * *
>
> On December 19, 1974, after having moved into evidence all its necessary physical exhibits, the United States rested its case. (December 20, 1974, order of the district court finding petitioner guilty. Emphasis supplied. App. C, *infra*, p. 2c-3c)

The certified record, which we have carefully reviewed, discloses that the stipulated evidence was not filed seriatim, but rather in discrete fashion. For example, on the day the trial commenced November 22, 1974, the government filed sections II, IV and V(f). (File stamped record on appeal and transcript of November 22, 1974, at p. 8.)

On December 2, 1974, the government filed sections I, III, V, VI and that portion entitled "Record and Index of Record." (File stamped record on appeal.)

We have Xeroxed the actual Record and Index of Record in the appellate file (App. D, *infra*, p. 1d) which bears the district court file stamp date of December 2, 1974, and which document concludes as follows:

> "On November 22, 1974, further in accord with the procedures set forth in the Court's order of that date and, upon agreement of all parties, the government's record of Sections II and IV, in *toto* and a sub-section of Section V (i.e., sub-section F) were thereupon proferred to the defendants and to the Court for examination. Thereafter, each defendant individually, and his counsel and the government through its counsel, affixed his personal signature to the documents as afore described. The Court accepted the first portion of the stipulated record and thereupon the trial commenced. The Court so instructed the defendants and ordered their presence at all subsequent stages of the trial *to include this date, Monday, December 2, 1974.*" (Emphasis supplied.)

It is "this document" entitled *Record and Index of Record*, which alludes to petitioner's prior narcotic conviction, which the government has consistently *and soley* relied upon as meeting the enhanced penalty statutory requirement that an "information" be filed by the United States Attorney "before trial." 21 U.S.C. 851(a)(1).

The court of appeals rejected our claim in a cursory order stating *inter alia*, that the requirements of 21 U.S.C. 851(a)(1) were met by reason of the notice given in the stipulated record "presented to the Court

and received by counsel for the appellant prior to trial. . . ."

In a petition for rehearing we pointed out that this order was factually erroneous in that the Record and Index of Record was not actually filed until well over a week after the trial had commenced. Unimpressed, the Court denied the petition for rehearing by fiat.

REASONS FOR GRANTING THE PETITION

The record herein clearly demonstrates that petitioner is now serving an illegal thirty year sentence. The government's attempted compliance with the enhancement statute reveals an effort that can best be described as being both too little and too late.[2] As we see it, the judgment below squarely conflicts with the case of *United States v. Noland*, 495 F.2d 529 (5th Cir.) *cert. denied*, 419 U.S. 966 (1974).

In *Noland*, the defendant was convicted on two drug counts carrying a maximum penalty of 5 years each and given enhanced concurrent sentences of 10 years on each count by reason of a prior drug conviction. Appellant argued that the enhanced penalty was invalid because the government filed an information for

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[2] The court below was probably led into factual error by a portion of the November 22, 1974, transcript which contains an indication that government counsel filed the Record and Index of Record that date. (Tr. 5) He obviously changed his tatic, however, because no such document was filed that date and the only Record and Index of Record filed, bears the filing stamp of December 2, 1974, and the very language therein internally attests to that as the filing date.

enhancement one day after sentencing rather than prior to trial as required by 18 U.S.C. 851(a)(1). The government argued that this was a technical defect in procedure which was *de minimis* because: 1. appellant was advised at arraignment that he could receive 10 years on each count; 2. appellant knew of his prior conviction at the outset, never challenged its validity, and admitted it at the sentencing hearing; 3. the District Court received pretrial notice of appellant's record at a bail hearing. The court held that:

> "The statute prohibits an enhanced sentence unless the Government seeks it and requires that to obtain enhancement, the Government must file an information prior to trial. Provision for enhanced sentencing is a legislative decision, and the procedure the legislature prescribes to effectuate its purpose must be followed. Noland's concurrent sentences must therefore be reduced to the statutory maximum of five years on each count to run concurrently."

No better able to shoulder the burden of enhanced sentences herein was the inartful phrasing of the Government's "Index of Record" which, simply put, was not the *filing of an information* mandated by 21 U.S.C. 851(a)(1) nor was the document–however it is construed–filed "before trial."

While the Court below may well have had enough of the claims of petitioner–especially after this Court reversed a ruling in his favor–he is nonetheless entitled to be sentenced in a legal fashion and on a correct factual record. This case is also of great importance for the guidance of courts and prosecutors around the country at a time when narcotic prosecutions and the use of enhanced penalties are greatly proliferating. A

clear mandate from this Court in the case at bar, will substantially aid the administration of criminal justice in the federal courts by outlining the procedures to be taken before narcotic sentences can be enhanced.

CONCLUSION

The petition for a writ of certioriari should be granted.

Respectfully submitted.

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October 1977

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CIRCUIT

SEPTEMBER TERM, 1976

No. 75-1275
Criminal No. 74-1275

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY,
Appellant

United States Court of Appeals
for the District of Columbia Circuit
FILED AUG 24 1977
GEORGE A. FISHER
CLERK

And consolidated cases No.s 75-1276
and 75-1691

BEFORE: McGowan, Tamm and Robb, Circuit Judges

O R D E R

Upon consideration of appellant's motion for reconsideration of argument V of his brief, of appellee's opposition thereto, of appellant's reply, and of the record below, and it appearing to the Court that the Government complied with the requirements of 21 U.S.C. §851(a)(1) by reason of notice given in the

stipulated record presented to the Court and received by counsel for the appellant prior to trial, it is

ORDERED, by the Court, that appellant's motion for reconsideration is denied.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CIRCUIT

September Term, 1976

No. 75-1275

Criminal No. 74-623

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY,
Appellant

No. 75-1276

Criminal No. 74-624

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY,
Appellant

United States Court of Appeals
FILED SEP
GEORGE A. FISHER

No. 75-1691

Criminal No. 74-623

UNITED STATES OF AMERICA

v.

JAMES W. KELLY,

Appellant

BEFORE: McGowan, Tamm and Robb, Circuit Judges

ORDER

Upon consideration of the petition for rehearing filed by appellant in appeal Nos. 75-1275 and 75-1276, it is

ORDERED, by the Court, that appellant's aforesaid petition is denied.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Nos. 74-623
74-624

FILED
DEC 20 1974
JAMES F. DAVEY, CLERK

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY, *et al.*

JUDGMENT

Criminal Case No. 623-74 involves a seventeen-count indictment alleging that both defendants, Ramsey and Kelly, participated in a massive international heroin importation operation during the latter part of 1973 and early 1974, which resulted in wholesale distribution of the drugs in this area. In Criminal Case No. 624-74, the defendant Ramsey is charged in a four-count indictment with possessing a number of weapons at one of the sites allegedly involved in the Ramsey-Kelly heroin distribution scheme.

On November 22, 1974, this Court ordered that Criminal Case No. 623-74 and 624-74 be joined for trial and that the evidence as regards all of the alleged offenses would be received under certain procedures described in that order. The sequence of the proceed-

ings and the nature of the trial of these cases have been atypical. There were extensive pre-trial negotiations between the Government and the Defense and this Court in its order of November 22, 1974, reflected its determination that without prejudice or claim of prejudice by the defendants, personally or through their counsel, the procedures agreed to by all parties would be followed. What would have been an extensive, lengthy and complicated trial involving approximately 125 Government witnesses including a number of law enforcement officials from Germany and Thailand, was thereby greatly simplified. The procedures described in this Court's order of November 22, 1974, and agreed to by all parties, clearly serve the interest of justice and the community while greatly economizing the time of the Court and allowing for an expeditious resolution of certain legal issues raised prior to trial.

On November 22, 1974, trial by jury earlier having been waived, on November 18, 1974, the Court accepted a document earlier profferred by the Government for examination and thereupon the trial commenced.

Thereafter, a voluminous and meticulously documented Record was submitted by the United States. The facts contained therein are uncontested. Fifty-five numbered Government exhibits have been admitted into evidence as relevant to all counts of both indictments without objection. Additionally, this Court, throughout this proceeding, has carefully considered and denied such legal motions as were raised by each of the defendants.

On December 19, 1974, after having moved into evidence all its necessary physical exhibits, the United

States rested its case. Motions for judgments of acquittal on the part of both defendants were fully considered and denied. Neither defendant elected to present evidence in his behalf as regards either case and the Defense rested. At that time, pursuant to the pre-trial negotiations as reflected in the Court's Order of November 22, 1974, the United States moved to sever certain counts as regards each of the defendants in both of the indictments. This Court is now asked to reach its verdict (A) as regards defendant Ramsey on Counts 1, 2, 14, 15 and 17 in Criminal Case No. 623-74 and Counts 1 and 3 in Criminal Case No. 624-74; and (B) as regards defendant Kelly on Counts 1, 3 and 17 in Criminal Case No. 623-74.

After careful consideration of all of the evidence and such legal objections as have been raised, this Court adopts *in toto* the Government's uncontested Record of Evidence and finds the evidence submitted consitutes proof beyond a reasonable doubt of each of the elements of the offenses in the specific counts on which verdict is now sought.

Therefore, as to defendant Charles W. Ramsey, the Court, in Criminal Number 623-74, finds him guilty as charged in Counts *one, two, fourteen, fifteen* and *seventeen* and in Criminal Number 624-74, guilty as charged in Counts *one* and *three.*

As to defendant James W. Kelly, the Court, in Criminal Case Number 623-74, finds him guilty as charged in Counts *one, two*, and *seventeen.*

IT IS THEREBY ORDERED, this 20th day of December, 1974, that the guilty verdict so rendered be entered into the record of this Court.

/s/ John Lewis Smith, Jr.
JUDGE JOHN LEWIS SMITH, JR.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Case No. 624-74

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY

Criminal Case No. 623-74

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY
JAMES W. KELLY

FILED
DEC 2 1974
JAMES F. DAVEY, CLERK

RECORD

INDEX OF RECORD

Section I. Evidence re: Inception of the alleged Ramsey-Kelly operation in the United States.

Section II. Evidence re: Relevant German Investigation.

Section III. Evidence re: November 23, 1973, through December 14, 1973. Relevant trans-continental telephone conversations between Bailey and Ramsey and other relevant events during this time.

Section IV. Evidence re: Relevant Thai Investigation.

Section V. Evidence re: Relevant events of February 2 through February 15, 1974.

Section VI. Evidence re: Financing of the alleged Ramsey-Kelly operation.

PREAMBLE

The above-captioned cases having come on for trial in this Court on November 18, 1974, and the defendants Charles W. Ramsey and James W. Kelly personally and through their counsel thereupon having waived jury trial and the United States having consented to trial by the Court and all parties having consented to trial under the procedures agreed upon as described in the Court's Order of this date, the parties respectfully submit that from the available witnesses and physical exhibits identified *infra* the Government's factually uncontested evidence as to Criminal Case Nos. 623-74 and 624-74 is as follows:

The sequence of proceedings and the nature and scope of the evidence to be introduced upon trial as regards Sections I through VI, the nature and scope of the evidence to be submitted on trial cover all counts of both indictments, Criminal Case Nos. 623-74 and 624-74. However, as was noted in the Court's order of November 22, 1974 in Criminal Case Nos. 623 and 624-74, certain matters were to be taken up out of order, the named cases were to be joined for trial by the Court under the procedures set forth in that Order, as previously suggested by both the Government, and the Defense, following extensive pre-trial negotiations.

As a result of these pre-trial negotiations between the Government and the Defense, it was agreed that upon the Court's acceptance of the uncontested evidence by the Government upon all counts of both indictments and the Court's resolution of such legal issues as to relevance, materiality and sufficiency as might be raised by the Defense, that thereupon the Government would sever the certain number of counts as regards each defendant and each indictment, resulting, apart from exposure to certain monetary fines, and the maximum exposure to imprisonment, should either defendant be found guilty upon the counts submitted to the Court of (A) 84 years total as regards defendant Ramsey in both Criminal Cases number 623 and 624-74 and (B) 34 years total as regards defendant Kelly. It was noted further, as regards defendant Ramsey that in no event would the Government sever certain named counts, specifically including, *inter alia*, in Criminal Case No. 623-74, Count I and Count III of that indictment in regards both of which counts certain increased penalty is provided by law, the Court having been informed of defendant Ramsey's prior conviction in Criminal Case No. 218-68 of the felony violation of the narcotics laws of the United States, i.e., a violation of Section 4704(a), Title 26, United States Code. On November 22, 1974, further in accord with the procedures set forth in the Court's order of that date and, upon agreement of all parties, the Government's record of Sections II and IV, in *toto* and a sub-section of Section V (i.e., sub-section F) were thereupon proffered to the defendants and to the Court for examination. Thereafter, each defendant individually, and his counsel and the Government through its counsel, affixed his

personal signature to the documents as afore described, the Court accepted the first portion of the stipulated record and thereupon the trial commenced. The Court so instructed the defendants and ordered their presence at all subsequent stages of the trial to include this date, Monday, December 2, 1974.